

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
MAY 3, 2022**

**CALL TO ORDER
6:16 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:16 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Jim Dyon, Tom Davis, Cal Dyck, and Roger Noble. Tobie Liechti had an excused absence. Erik Mack, Landon Stevens, and Erin Appert represented the Flathead County Planning & Zoning Office.

There were 15 members of the public in attendance at the meeting and 7 members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:16 PM**

Davis motioned, seconded by Noble, to approve the March 1, 2022, minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:16 PM**

None

**RODNEY & TIA
MACFARLANE
(FCU-22-08)
6:17 PM**

A request from Rodney & Tia Macfarlane, for a conditional use permit to build two four-plex apartment buildings on property located at 173 Jewel Basin Court, Bigfork, MT within the Bigfork Zoning District. The property is zoned B-3 (Community Business) and can legally be described as Lot 4 Jewel Basin Plaza Subdivision.

**STAFF REPORT
6:17 PM**

Landon Stevens reviewed the Staff Report FCU-22-08 for the board.

**BOARD QUESTIONS
6:18 PM**

Noble asked about the difference of maps in the packet. The maps were the same, just a different size and orientation. Noble asked if both ends were open space. Staff replied that there were open spaces on both ends.

**APPLICANT
PRESENTATION
6:20 PM**

None

**PUBLIC COMMENT
6:20 PM**

Walter Rountree, 22 5th Ave E, spoke in support of the application. He was a landlord in the area. He discussed how rentals were in high demand and people were desperate to find them. He was in support of the application because there was a rental crisis, that was only getting worse.

Rebecca Gilliard, 1080 Swan Horseshoe, spoke in support of the application. She was aware of the housing crisis in the county. She said Bigfork had it harder than other areas, simply because there was not a lot of land available. She was a realtor and had a finger on the pulse of people that were looking. She said that, ultimately, they would rather have home ownership, but there was a real need for rentals. She felt that this was a prime location for a four-plex.

Laura Reynolds, 22 5th Ave E, spoke in support of the application. She was the seller of the land, and the sale was contingent on getting a conditional use permit. She felt it was a good project and good for the community.

**BOARD DISCUSSION
6:26 PM**

Davis asked if there had been any preliminary conversations with Environmental Health. Macfarlane said they had hired engineers. Davis asked if there had been any feedback and they said they had received a “will serve letter” from Bigfork Water and Sewer.

Davis felt that this project was similar to what had already been developed in that area. He did not see anything as to why they would not approve it. He suspected that they might want to consider some of the conditions that were placed the last time, for consistency. He felt there was a need for affordable housing in the area.

Noble was on the same page as Davis. He looked at the previous applications; the most recent application [from the applicants] had conditions for fencing and/or play area. He was surprised that this came forward without said conditions since their previous ones had those conditions implicated on them. He did not know why the applicant was not considering that. If it was going to move forward with his vote, it was going to have those conditions. If this had been a regular subdivision, it would have come forward with dedicated parkland or they would have been paying a fee, in leu of that, to the Parks Department. He felt both ends should be considered parkland and a playground put on one of them so that the kids had a place to go. That was his recommendation.

Jim Dyon agreed [*the rest was inaudible*].

Dyck discussed with the board, logistically, what that would look like. They were concerned about the safety issue. Davis agreed there needed to be fencing because it was a safety issue. He felt they could hold off on the playground and leave that as the choice of the developer. Dyck concurred with the fence for safety and felt playgrounds could be a headache. It would give them a space to play safely. The applicants were, in a sense, building a subdivision, one lot at a time.

Rod MacFarlane, 1191 Majestic View Lane, was the applicant and had a comment to add. He felt that fencing a portion of the lots was going to make it look “Hodge-podgy” because none of the other lots with apartments had fences on them. He did not see a safety concern. He had worked in there for several years. The traffic was slow on Jewel Basin Court and had wide setbacks. He could not speak to future development around the area.

Dyck reiterated that there had been several projects where they required fencing as conditions of approval and still felt it was a safety issue. They were looking at fencing 124’ of the east boundary, not the whole property. The western boundary would have some sort of barrier, with fencing, to keep between the roads.

Dyon interjected it would get busier as they continued to develop that area.

They discussed, at length, the language to be used in the additional condition for fencing.

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-22-08)
6:39 PM**

Noble made a motion, seconded by Davis, to accept Staff Report FCU-22-08 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-22-08)
6:39 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO ADD
CONDITION #15
6:39 PM**

Dyck motioned, seconded by Noble, to add Condition #15 to state:

15. The developer/owner shall be required to erect a fence four feet in height along the eastern and western property boundaries. The fence on the eastern property boundary shall be 124’ in length and the fence along the western property boundary shall be 100’ in length per the site plan dimensions.

**ROLL CALL TO ADD
CONDITION #15
6:10 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FCU-22-08)
6:40 PM**

Noble made a motion, seconded by Dyon, to approve FCU-22-08, as amended.

**ROLL CALL TO
APPROVE
(FCU-22-08)
6:40 PM**

Motion passed unanimously on a roll call vote.

**MARINA SEARS
(FZV-22-01)
6:41 PM**

A request from Marina Sears for a variance to Section 3.11.040(3)(A) and Section 3.11.040(3)(B) of the Flathead County Zoning Regulations (FCZR), to the front yard setback and the side yard setback requirements for a structure. The subject property is zoned R-2 (One-Family Limited Residential) and SC (Scenic Corridor) and is located at 278 Lakeside Blvd/33 Larchwood Lane, Lakeside, MT within the Lakeside Boulevard North and Scenic Corridor Zoning Districts.

**STAFF REPORT
6:41 PM**

Erin Appert reviewed the Staff Report FZV-22-01 for the board.

**BOARD QUESTIONS
6:44 PM**

Davis asked for clarification on the definition of an accessory structure vs. a guest house. They discussed this at length. Davis wondered if they had to provide additional parking for an accessory structure. Staff said an additional 2 parking spaces would be required for a guest house or dwelling.

Davis asked about the eastern side of the road being considered as a part of the building envelope. She referenced the site plan and said she did not believe so because the entire structure would be located within the 20' setback, which was right on the edge of the lakeshore protection zone.

Noble said there were 9 findings and asked if any of them were favorable. She replied that there were two and read them. They discussed the other houses that were grandfathered in and completed before zoning.

**APPLICANT
PRESENTATION
6:48 PM**

Marina Sears, 278 Lakeside Blvd., was the applicant. She felt that it was untrue to say that the whole structure was within the setback. She explained her reasoning based on her understanding of the setbacks of the property. She recounted meeting with Sands Surveying and her architect, prior to purchasing the property, to see what she would be able to do with it. She said Lakeside Boulevard was not as busy as one would assume and that many times you will find people recreating on it, along with cars coming by. She wanted to build a bathroom, and a place to store the toys, so that her family could utilize it and not have to cross the boulevard to get to the main house. She was concerned with the safety of her family having to cross the boulevard.

Lindsey Hromadka, attorney representing Sears, clarified they were requesting a variance from the front 20' setback, not the 5' setback, because they were not building a guest house but a detached accessory structure and could meet the 5'. She explained the lot being designated as a through lot, thus creating the 20' setbacks on the incorporated roads. She read the definition of a through lot. This was the only property that had been designated as a through lot and other structures in the vicinity had structures built within the required 20' setback. She felt the other issue to be considered was that her client's property was less than 200' and should not be considered a through lot, as defined in the regulations. She claimed that Sears was deprived of rights, enjoyed by others who lived on Lakeside Boulevard, and discussed this at length. Hromadka continued to rebut the staff report in detail. She said Sears had the right to request a variance and explained that Sears did not create the hardship. She addressed the letter from the road department and said they did not have the right to dump county snow on the right of way. She said the public was not going to be hurt by this then summarized the proposal and the intent.

**BOARD QUESTIONS
7:06 pm**

None

**PUBLIC COMMENT
7:06 PM**

Darla Harmon, 245 Lakeside Blvd., was a neighboring property owner and was in support of the application. She was related to Sears and had a close relationship. She spoke to the fact that Sears had done her due diligence with research. She found it interesting that all the paperwork from the engineers and developer had not come up with what the county was saying. She felt the road was very deceiving to children because people would recreate on it but then there would be an occasional vehicle speeding by. She understood the need to have a facility, on the lakeside of the road, to keep the kids safe. She spoke to the fact that she knew of many properties that were within a 20' setback because

they did not have the same designation and were built even after zoning designations were in place. She explained that parking would be on the other side of the lake. She felt some of the people in opposition did not take their neighbors into consideration when it came to their property rights and imposing on their neighbors.

Walter Rowntree, 225 5th Ave E, spoke in support of the application because this was the only lot considered a through lot. He questioned how many structures were grandfathered in but would be approved by virtue of the lots not being considered through lots. He also felt they should keep the safety of the children safe even if it meant a small structure on the property.

Nadine Eckert, 935 4th St. W., spoke in support of the application. She spoke to the applicant's character and to the fact that she was trying to keep her grandchildren safe.

Sandy Fox, 43 Larchwood Ln, spoke in support of the application and felt Sears had been treated unfairly for having her property being designated as a through lot. She also spoke of the inconvenience of not having a structure near the water and having to cross the road and uphill to the main residence.

Jean Barragan, 29 Larchwood Lane, spoke in opposition of the application. She had been a part of the effort to implement zoning regulations in the neighborhood. At the time, the neighborhood had 80% support and a need for zoning regulations. Most people were interested in setbacks and 80% of the people were in support of the R-2 zoning. She discussed their process at length. She said that Sears had bought the property knowing that the beachfront was not adequate for another structure. There were other cabins/structures along the way that were on that side of the boulevard but also had more space on the property. Zoning had been implemented in 2011 and was set in place for future growth and construction. She felt the BOA had done their diligence in enforcing the zoning regulations that were passed in 2011.

Rex Bowler, 320 Lakeside Blvd, spoke in opposition of the application. He was in agreement with the staff report and felt the variance was not supported and therefore should be denied. He discussed other alternatives the applicant had. He discussed the fact that the zoning regulations were supported by the majority of the neighbors, passed in January 2011, and should be upheld.

Kim [inaudible], 298 Lakeside Blvd, spoke in opposition of the application. They did not live there full time but had the property to the immediate south of the proposal. They were in support of everything that had been shared previously. Sidewalks in the setbacks were allowed. There had been no building within the setbacks since the zoning had been put into place. Pictures provided by the applicant's counsel were grandfathered and

were built before the zoning regulations passed. She also was concerned that Fox wanted to build one with a variance as well.

APPLICANT REBUTTAL
7:22 PM

Hromadka appreciated the zoning that was in place but reiterated that a variance was part of that process, and her client had the right to ask for one. She reiterated that the applicant wanted a small structure, not a guest home. She said the lakeshore protection zone would not be impacted by her small structure.

STAFF REBUTTAL
7:24 PM

Staff clarified that the email being referenced and that a formal determination was not requested. Most interactions were through emails, walk-ins, or phone calls. There was no written determination because all interactions referenced were through emails, walk-ins, or phone calls.

Mack discussed the traffic count giving details of 122 average daily trips per day; it was not a busy day.

Mack also clarified that zoning did not care that there was an eastside and a westside but was recognized as a 1-lot property (as a whole). There was room on the other side of the road to build the structure as an alternative.

BOARD DISCUSSION
7:25 PM

Noble asked about a similar request they had reviewed, where they had considerable discussion on what a through lot was. He asked Mack to reiterate the definition so that the new board members could hear as well. Mack discussed the definition, and the board discussed the logistics at length as to how they came to this conclusion.

Davis saw that a lot of neighbors did appear to have buildings within the setback, but it looked like most of the structures were built prior to 2011, when the zoning was put in place and were therefore legally nonconforming. He understood the concern over the safety of the children and felt people universally wanted them to remain safe and enjoy the lake. Outside of having a bathroom, he questioned how safety concerns would be completely alleviated. The structure was not very large, and kids would run around. The road seemed to be a quiet road, with approximately 120 trips per day was not terribly busy. He felt the zoning district was put into place by the neighborhood for a reason. If they were to grant this variance, it would be tough to defend future variances down the road. At the moment, he was leaning towards not approving the variance.

Noble empathized with the concern for the children crossing the road. He agreed that they did have the right to request the variance, albeit [the board] had a right to not grant it. His consideration also took into fact that the neighborhood, which was mostly supportive, wanted zoning to be put in place in 2011. When he looked at the survey, it was not a zoning survey that identified the legal aspects of the property, it was a topographic survey. That type of

survey was not going identify it as a through lot or any special designation. He struggled that there was considerable amount of opposition to the variance. The findings, in the staff report, were not in support of the variance. They would have to rewrite the findings and the conditions. He felt the staff did a good job of evaluating the proposal and he could not get past the fact that they would have to rewrite the whole thing.

Dyon agreed with what had been shared previously. He had driven through the area and saw the structures that were there, which research had shown that they had been grandfathered in. [*The rest was inaudible*]

Dyck had also driven down to see the area and had done the research. He also pointed out that Lakeside had an easement for sewer and water, and it would be extremely tight if a structure were to be placed in that area. He discussed the easements and setbacks that were in place. The main thing was that they were not denying the use of the property, which could still be used to its potential on the westside of the property. Trying to get a variance to fit everything would be very difficult. He did not see how they could rewrite the whole [staff report]. They needed to also understand the rules that they had to work with were not rules that they created themselves. These were rules that were put together by the county and the commissioners. They had criteria they had to follow to make their decisions and could not make them arbitrarily. They had responsibilities to follow the rules, that was what zoning as about. He was in agreement with the other board members and did not see how they could approve the variance.

**MAIN MOTION TO
ADOPT F.O.F.
(FZV-22-01)
7:37 PM**

Noble made a motion, seconded by Davis, to accept Staff Report FZV-22-01 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FZV-22-01)
7:37 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO DENY
(FZV-22-01)
7:37 PM**

Dyck made a motion, seconded by Noble, to deny FZV-22-01.

**ROLL CALL TO
APPROVE
(FZV-22-01)
7:38 PM**

Motion passed unanimously on a roll call vote.

**OLD BUSINESS
7:38 PM**

Staff reminded the BOA that there was to be a workshop with Planning Board, next week, to address the short-term rentals in Flathead County.

**NEW BUSINESS
7:39 PM**

Next month's meeting will be at the fairgrounds because the south campus conference rooms will be booked.

**ADJOURNMENT
7:40 PM**

The meeting was adjourned at approximately 7:40 pm on a motion by Dyck, seconded by Noble. The next meeting will be held at 6:00 pm on June 7, 2022.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 08/02/2022